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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,116	01/24/2006	Akihisa Inoue	OGOSH44USA	3700
270 7590 04/09/2008 HOWSON AND HOWSON SUITE 210 501 OFFICE CENTER DRIVE FT WASHINGTON, PA 19034				
EXAMINER ZHU, WEIPING				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
04/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,116

Applicant(s)

INOUE ET AL.

Examiner

WEIPING ZHU

Art Unit

1793

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 3, 14-25 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) 15-19 and 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 3, 14, 20 and 34-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. Claims 2, 3, 14, 20 and 34-36 are currently under examination, wherein claims 2, 3, 14, 20 and 34 have not been amended and claims 35 and 36 have been newly added in applicant's amendment filed on January 24, 2008.

Status of Previous Rejections

2. The previous rejections to Claims 2, 3, 14, 20 and 34 under 35 U.S.C. 103(a) as being unpatentable over Fan et al. ("Deformation Behavior of Zr-Based Bulk Nanocrystalline Amorphous Alloys", Physical Review B, volume 61, number 6, R3761-R3763, February 1, 2000-II) in view of Hu (US 6,096,640) as stated in the Office action dated October 11, 2007 have been maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 3, 14, 20 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan et al. in view of Hu ('640).

With respect to Claims 2, 3, 14, 20 and 34, they are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan et al. in view of Hu ('640) as stated in the Office action dated October 11, 2007.

With respect to claims 35 and 36, Fan et al. in view of Hu ('640) do not specify the diameter of the sputtering target as claimed. However it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the bulk metallic glass produced in the process of Fan et al. in view of Hu ('640) into a sputtering target having the claimed diameter with expected success, because Fan et al. in view of Hu ('640) disclose that the bulk metallic glass having throughout uniform average crystallite size of 2.0-2.5 nm (Fan et al., the paragraph bridging the left and right columns and Fig. 2, page R3762), which reasonably appear to be only slightly different than the bulk metallic glass as claimed in the instant claim 2, can be successfully produced without any limitations on the size and the shape of the bulk metallic glass to be produced (abstract). Furthermore, it is well settled that merely changing the size of an article is not a matter of invention. See MPEP 2144.04 IV.

Response to Arguments

4. The applicant's arguments filed on January 24, 2008 have been fully considered but they are not persuasive.

First, the applicant argues that if an ingot were made according to Fan et al. in the size required of a sputtering target (i.e. more than several cm in diameter), it would clearly not have a structure that is only "slightly different" than that required by claim 2 of the instant application. In response, the examiner notes that the arguments of the counsel cannot be relied upon as evidence. See MPEP 21206.02. Also see the reasons of the rejections of claims 35 and 36 in the paragraph above.

Second, the applicant argues that the rationale for combining Fan et al. in view of Hu ('640) is a mere conclusive statement insufficient to support the legal conclusion of obviousness. In response, see the response to applicant's 1st argument above. The motivation to combine Fan et al. with Hu ('640) as stated in the Office action dated October 11, 2007 is proper and maintained.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Weiping Zhu whose telephone number is 571-272-6725. The examiner can normally be reached on 8:30-16:30 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy King/
Supervisory Patent Examiner, Art
Unit 1793

WZ

3/25/2008

Application Number**Application/Control No.**

10/566,116

Examiner

WEIPING ZHU

**Applicant(s)/Patent under
Reexamination**

INOUE ET AL.

Art Unit

1793